

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLETE REO HART,

Plaintiff,

No. CIV S-04-1424 MCE DAD P

vs.

CALIFORNIA MEDICAL FACILITY,
et al.,

ORDER

Defendants.

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$150.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$12.65 will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the

1 preceding month's income credited to plaintiff's prison trust account. These payments will be
2 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's
3 account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief
5 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
7 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
8 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
9 U.S.C. § 1915A(b)(1),(2).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
12 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
16 Cir. 1989); Franklin, 745 F.2d at 1227.

17 A complaint, or portion thereof, should only be dismissed for failure to state a
18 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
19 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
20 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
21 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
22 complaint under this standard, the court must accept as true the allegations of the complaint in
23 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
24 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,
25 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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1 The court finds the allegations in plaintiff's complaint so vague and conclusory
2 that it is unable to determine whether the current action is frivolous or fails to state a claim for
3 relief. The court has determined that the complaint does not contain a short and plain statement
4 as required by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading
5 policy, a complaint must give fair notice and state the elements of the claim plainly and
6 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
7 must allege with at least some degree of particularity overt acts which defendants engaged in that
8 support plaintiff's claim. Id. In his complaint, plaintiff has named seventeen individuals as
9 defendants, but he has not provided any factual allegations concerning any of these defendants.
10 In addition, plaintiff has named the California Medical Facility, the Trust Account Office, and
11 "Mailroom Representatives" as defendants. Plaintiff is advised that the California Medical
12 Facility is not a proper defendant in this action. See Allison v. California Adult Authority, 419
13 F.2d 822, 823 (9th Cir.1969) (holding that California Adult Authority and San Quentin Prison
14 not persons within meaning of Civil Rights Act). In addition, the Trust Account Office is not a
15 proper defendant. However, plaintiff may be able to state a cognizable claim against specific
16 persons working in the Trust Account Office. Lastly, plaintiff must provide further allegations
17 concerning the "Mailroom Representatives" he has named in order for the court to determine
18 whether one or more persons are involved, whether plaintiff's allegations support a constitutional
19 claim, and whether the person or persons are sufficiently identified for purposes of service of
20 process. Because plaintiff has failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2),
21 the complaint must be dismissed. The court will, however, grant leave to file an amended
22 complaint.

23 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
24 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
25 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Plaintiff must clearly identify his constitutional
26 claims. Also, the complaint must allege in specific terms how each named defendant is involved.

1 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
2 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.
3 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d
4 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation
5 in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir.
6 1982).

7 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
8 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
9 amended complaint be complete in itself without reference to any prior pleading. This is
10 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
11 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
12 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
13 original complaint, each claim and the involvement of each defendant must be sufficiently
14 alleged.

15 In accordance with the above, IT IS HEREBY ORDERED that:

16 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

17 2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.

18 Plaintiff is assessed an initial partial filing fee of \$12.65. All fees shall be collected and paid in
19 accordance with this court's order to the Director of the California Department of Corrections
20 filed concurrently herewith.

21 3. Plaintiff's complaint is dismissed.

22 4. Plaintiff is granted thirty days from the date of service of this order to file an
23 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
24 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
25 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must use
26 the form complaint provided by the court; plaintiff must file an original and two copies of the

1 amended complaint; failure to file an amended complaint in accordance with this order will result
2 in a recommendation that this action be dismissed.

3 5. The Clerk of the Court is directed to provide plaintiff a copy of the court's form
4 complaint for a § 1983 action.

5 DATED: July 1, 2005.

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7 DALE A. DROZD
8 UNITED STATES MAGISTRATE JUDGE

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